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FEB 14 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 3, 1999

**VIA UPS OVERNIGHT**

Magalie Roman Salas, Secretary  
Portals  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: In the Matter of the Petition for  
Declaratory Ruling and Request for  
Expedited Action on the July 15, 1997  
Order of Pennsylvania Public Utility  
Commission Regarding Area Codes 412,  
610, 215 and 717 (CC Docket No. 96-98)**

Dear Ms. Salas:

Enclosed for filing in the above matter is an original and five (5) copies of the Opposition of Nextel Communications, Inc. to Petitions for Reconsideration and Clarification. I have also included copies for each Commissioner.

Sincerely,



Nathan T. Foose

NTF/rmc

cc: Larry Krevor  
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FEB 14 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

Petition for Declaratory Ruling and  
Request for Expedited Action on  
July 15, 1997 Order of the Pennsylvania  
Public Utility Commission Regarding  
Area Codes 412, 610, 215 and 717

NSD File No. L-97-42

Implementation of the Local  
Competition Provisions of the  
Telecommunications Act of 1996

CC Docket No. 96-98

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.  
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

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February 4, 1999

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## SUMMARY

Nextel Communications, Inc. ("Nextel") opposes the Petitions for Reconsideration filed in this proceeding. The *Pennsylvania Order* primarily provided a much needed reiteration of the Federal Communications Commission's ("FCC") rules that permit the states to engage in numbering authority in essentially one limited, but important function -- area code relief. This reaffirmation was necessary because Pennsylvania, as well as other states, were ignoring the rules and orders of the Commission by considering or unlawfully attempting to engage in number administration beyond the scope of those rules such as administration of NXXs, dividing NXXs among carriers or requiring the pooling of thousand number blocks. Such actions not only violate FCC rules, but threaten the efficiency and operation of the national telecommunications network and the regulatory basis for that network.

The Petitions for Reconsideration erroneously claim that the *Pennsylvania Order* restricts the scope of permitted state number administration activity. The FCC, in its *Local Competition Second Report and Order* released August 8, 1996 promulgated the rules that set out this scope of state permitted authority as being limited to the area code relief function. The only portion of such authority changed by the *Pennsylvania Order* is to allow states to take limited additional numbering administration actions in certain prescribed circumstances and to clarify the states' ability to request additional authority. Thus, petitioners' claims of being surprised, or restricted, or left in a quandary by the *Pennsylvania Order* lack credibility.

Historically, many states have exceeded their authority to engage in number administration or have been reluctant to order necessary area code relief. The results of such actions are particularly evident in Pennsylvania where, due to the Pennsylvania Public Utility

Commission's unwillingness to abide by the scope of its duties, NXXs are unavailable today in much of the state and customers have been denied service or have received degraded service by certain carriers.

The FCC's numbering policies, as embodied in the *Pennsylvania Order*, will assure continued focus on area code relief when an area code is in jeopardy, as well as continued focus on a national solution to the inefficient use of numbers by carriers under the current system. It also permits states with innovative ideas or unique circumstances to come to the FCC for approval to implement such plans and, in certain circumstances, to require the rationing of NXXs. In sum, the FCC has allowed for the most state involvement possible as is consistent with Congress' vesting of authority over number administration in the FCC to assure an efficient, national numbering policy.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition for Declaratory Ruling and	)	NSD File No. L-97-42
Request for Expedited Action on	)	
July 15, 1997 Order of the Pennsylvania	)	
Public Utility Commission Regarding	)	
Area Codes 412, 610, 215 and 717	)	
Implementation of the Local	)	
Competition Provisions of the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.  
TO PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

## **I. Background**

Nextel Communications, Inc.<sup>1</sup> ("Nextel") hereby files its opposition to the Petitions for Reconsideration of the Federal Communication Commission's ("FCC") *Memorandum Opinion and Order on Reconsideration, In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, NSD File No. L-97-42, CC Docket 96-98, September 11, 1998 (*Pennsylvania Order*)<sup>2</sup>. The *Pennsylvania Order* embodies a much need re-emphasis of the scope of authority delegated to state regulators. The FCC clearly defines what state commissions may and may not do concerning matters of number administration. The *Pennsylvania Order* is a necessary affirmation of the FCC's policy concerning numbering matters in light of the fact that several states have ignored the limits on the authority delegated to them by the FCC.

Historically many states have exceeded their numbering administration authority and

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<sup>1</sup> Nextel and its affiliates provide a unique combination of two way digital mobile telephone, text messaging, alpha numeric paging and one-to-one and fleet dispatch service (Direct Connect) using a single integrated handset. Such services are provided through the use of Nextel's facilities and through interconnection with the public switched telephone network. Nextel provides these services through Specialized Mobile Radio ("SMR") licenses issued by the FCC under Part 90 of its rules (47 C.F.R. §90). SMR service is within the scope of commercial mobile radio service ("CMRS") as that term is defined in 47 U.S.C. §332 and 47 C.F.R. § 20.3. Nextel is also a "telecommunications carrier" as that term is defined in 47 U.S.C. §153 as amended by the Telecommunications Act of 1996.

<sup>2</sup> Petitions for reconsideration have been filed on behalf of the Connecticut Department of Utility Control, New Hampshire Public Utilities Commission, Colorado Public Utilities Commission, Massachusetts Department of Telecommunications and Energy, Maine Public Utilities Commission, Pennsylvania Public Utility Commission, Public Utility Commission of Texas, California Cable Television Association, MediaOne, NARUC, SBC and the California Public Utility Commission.

have been reluctant to order area code relief. The *Pennsylvania Order* is designed to foster the policies embodied in the FCC's rules concerning the administration of numbering resources. It requires states to order area code relief before ordering NXX code rationing. Numbering resources are jeopardized when states fail to order timely area code relief.

Nextel's experience in Pennsylvania is an example of the failure of a state regulatory commission to assure that numbers are available on an efficient, timely basis in a competitive market. By letter dated June 25, 1997, the Code Administrator notified the Pennsylvania Public Utility Commission (PA PUC) that NXX codes in the 215 and 610 NPAs (greater Philadelphia area) would exhaust in the second quarter of 1998. In response to this impending exhaust of NXX codes, the PA PUC, by order dated July 15, 1997 (*July 15 Order*), required the implementation of thousand number block pooling and the return of vacant thousand number blocks to the Code Administrator.

The PA PUC ordered the implementation of number pooling notwithstanding that not all carriers are able to participate in local number portability (LNP). Number pooling requires that a carrier be capable of implementing LNP. Since wireless carriers are not required to implement LNP until, at the earliest, March 31, 2000,<sup>3</sup> they were not able to participate in the PA PUC ordered number pooling. The *July 15 Order* made no provision for wireless carriers to gain access to telephone numbering resources outside of the pooling process once the existing NXXs were exhausted. Moreover, no technical standards or protocols then existed for implementing number pooling in a technically neutral, non-discriminatory and reliable manner.

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<sup>3</sup> *In the Matter of Telephone Number Portability, Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association, Memorandum and Order*, CC Docket No. 95-116, DA 98-1763 (September 1, 1998).



The *July 15 Order* also restricted the use of numbers within NXXs that had already been assigned to carriers. The PA PUC required that a carrier could not assign numbers from the next sequentially higher number block in an NXX until at least seventy percent (70%) of the numbers in the lower block had been assigned. In addition, the PA PUC required each carrier which held at least one NXX in an area code to return to the Code Administrator any additional NXXs which that carrier had held for more than nine (9) months and from which no numbers had been assigned, unless all other NXXs held by that carrier had fewer than twenty percent (20%) of available numbers vacant. The apparent purpose of this requirement was to maximize the availability of thousand number blocks for pooling and to increase the pool of available NXX codes. The practical effect was to remove numbering resources from carriers notwithstanding their business plan or customer needs.

Compounding the problem, the PA PUC required a transparent area code overlay, which involved the use of a new fictitious area code until the implementation of actual number pooling. This scheme required the use of technology known as remote call forwarding (RCF) in order to implement the transparent area code overlay. Wireless carriers indicated to the PA PUC that the use of RCF raised technical problems in the operation of the wireless carriers' networks. Use of RCF was simply not feasible for wireless carriers. In spite of the potential technological problems identified by wireless carriers, the PA PUC made no provisions for wireless carriers to obtain telephone numbers upon the exhaust of NXXs in the 215 and 610 NPAs.

Lastly, in addition to the number conservation methods listed above, the PA PUC, by Secretarial Letter dated July 28, 1997, ordered the Code Administrator to ration the assignment of NXX codes at the rate of three (3) codes per month. No industry meeting was convened and

no industry consensus was sought on this rationing plan. Instead the rationing plan was implemented solely on the unilateral decision of the PA PUC and without authority from the FCC. This rationing plan severely limited Nextel's access to the numbering resources it needed to provide service to its customers in the 215 and 610 NPAs. Nextel informed the PA PUC that it would run out of numbers in the 215 and 610 NPAs by the end of 1997 if not before.

Notwithstanding the impending exhaust of NXXs as indicated by the Code Administrator and in spite of Nextel's representation that it would run out of numbers, the PA PUC flatly refused to order area code relief. As Nextel had advised, in December of 1997 it completely ran out of telephone numbers in both the 215 and 610 NPAs. Because of the actions of the PA PUC, Nextel was at a distinct competitive disadvantage in terms of providing service to its customers in the greater Philadelphia area. Even at this juncture the PA PUC refused to order area code relief.

The PA PUC's aversion to ordering area code relief is shared by other jurisdictions as well. For instance, in Massachusetts the Code Administrator notified the Massachusetts Department of Telecommunications and Energy (DTE) on March 4, 1998 that the 617 and 508 NPAs were in jeopardy. The 1998 Central Office Code Utilization Survey (COCUS) reflect that the 617 NPA is due to exhaust in the first quarter of 1999 and that the 508 NPA is scheduled to exhaust the second quarter of 1999. On May 18, 1998 the North American Numbering Plan Administrator (NANPA) petitioned the DTE for area code relief. To date, the Massachusetts DTE has not ordered area code relief nor has it made any progress in area code relief proceedings. Instead, the Massachusetts DTE states in its petition for reconsideration that the *Pennsylvania Order* puts it in a "quandary" as to how it should respond to the exhaust of these

NPA's. The DTE complains that it cannot order number conservation without violating the *Pennsylvania Order*. On the other hand, the DTE refused for months even to set up a procedural schedule to consider area code relief, the very mechanism delegated to it by the FCC. In the meantime, numbering resources continue to dwindle.

In Massachusetts, the industry, on its own, developed a conservation proposal and filed it with the DTE. The industry, through its consensus process, agreed to administer its numbering resources on a thousand number block basis as part of its jeopardy procedures. Under the proposal, each carrier is permitted to hold a level of inventory sufficient to service six (6) months of customer demand. All vacant thousand number blocks are held in "reserve". Once a carrier's inventory falls below the six (6) month level, it may then move numbers in blocks of a thousand from its reserve to its inventory. The industry has been operating under this proposal since August 5, 1998 as part of the consensus jeopardy procedures. However, this voluntary conservation method is no substitute for area code relief.

Pennsylvania and Massachusetts are not alone in their recalcitrance to order area code relief. The New Jersey Board of Public Utilities (BPU) has shown great reluctance in ordering area code relief. According to the 1998 COCUS report, the New Jersey NPA 609 is scheduled to exhaust sometime during the third quarter of 1999. The BPU completed its area code docket in the 609 NPA over a year ago.<sup>4</sup> It finally ordered an area code split at its February 3, 1999 public meeting (no written order has been issued as of this date). The BPU also unilaterally ordered the rationing of NXXs in the 609 NPA without convening an industry meeting or requesting industry

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<sup>4</sup> The final briefs in the New Jersey area code docket were filed on December 4, 1997.

consensus. According to action taken by the NJ BPU at the February 3, 1999 meeting, its order will direct the Code Administrator to ration NXX codes at the rate of three (3) codes per month.

The experiences in these and other jurisdictions shows that some states postpone area code relief to the point where access to and the availability of numbering resources is severely compromised. By and large, these are the same jurisdictions that criticize the *Pennsylvania Order's* requirement that any rationing scheme ordered by a state commission must be conditioned upon an area code relief order with a date certain for implementation and lack of industry consensus.

There is reluctance on the part of some states to order area code relief because of the unpopularity of such action with at least some part of the public. A natural tendency on the part of state regulators is to avoid this controversial result by refusing or delaying the implementation of area code relief. As a national resource, the availability of telephone numbers should not be artificially restricted by the fear to address area code relief. The *Pennsylvania Order's* prerequisites for state ordered rationing ensures that, once jeopardy is declared, the primary item which state regulators must address is area code relief. Nextel respectfully submits that the nation and the telecommunications network benefit from the FCC policies which focus on the general need to provide area code relief once an area code is in jeopardy.

States have legitimate, sometime intensely politicized, concerns about frequent code relief activities given the requirements of consumer education and potential disruption to established dialing practices. The explosion of new telecommunications devices and services -- all requiring telephone numbers -- and the technological and regulatory changes permitting new wireless and wireline competition has, in some cases, overwhelmed the traditional number

assignment process created initially to support the monopoly Bell system and, later, a very limited number of service providers.

The ultimate solution to this problem is the number resource optimization measures discussed in the North American Numbering Council's Report to the FCC<sup>5</sup>. The FCC has solicited comment on these measures -- some amenable to state-by state implementation (e.g., rate center consolidation) -- most requiring consistent nationwide standards and processes (e.g., thousand block pooling)<sup>6</sup>. The Commission should deny the Petitions for Reconsideration, affirm the *Pennsylvania Order*, and focus its attention on speeding the implementation of these number optimization solutions.

## **II. Discussion**

### **A. Petitioners erroneously assert that the *Pennsylvania Order* restricts state regulators' authority over numbering administration.**

A common argument running through the Petitions for Reconsideration is that the FCC's *Pennsylvania Order* restricts the authority of state regulators in matters concerning NXX code administration. This assumes that state regulators possessed authority over NXX code administration prior to the issuance of the *Pennsylvania Order*. In fact, state regulators had no such authority to engage in number administration except for the limited delegated authority to order area code relief. Having no authority to assign and allocate NXXs, petitioners cannot

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<sup>5</sup> Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods.

<sup>6</sup> Nextel supports Rate Center Consolidation, Extended Local Calling and Inconsistent Rate Centers. Nextel also support wireline thousand block pooling.

complain that their authority over NXX administration has been restricted by the *Pennsylvania Order*.

At paragraph 23 the FCC states,

. . . in the *Local Competition Second Report and Order* we did not delegate any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure, is, under the current regulatory structure, acting outside of the scope of its delegated authority. (*Pennsylvania Order* at ¶ 23).

In this paragraph the FCC emphasizes the historical lack of state authority over NXX code allocation and administration. Exclusive jurisdiction over the administration of telephone numbers in the United States rests with the FCC as set forth by Congress under § 251(e)(1) of the Telecommunications Act of 1996 (47 U.S.C. § 251(e)(1)). The FCC may delegate certain duties to state regulators, however, to date it has only delegated to state commissions matters concerning area code relief as set forth under 47 C.F.R. § 52.19. The FCC has consistently refused to delegate NXX code administration to the individual states. The FCC has stated,

With specific regard to the CO [NXX] code allocation, two BOCs [Bell Operating Companies] and one state commission have asked us to delegate oversight of this function to the states on a permanent basis. We declined. (*Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC docket no. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392, 19533 (1996) (*Local Competition Second Report and Order*).

The refusal to delegate NXX code administration to the states is founded upon the FCC's policy that there be a uniform national numbering architecture. The FCC has stated that “. . . a nationwide, uniform system of numbering . . . is essential to efficient delivery of telecommunications services in the United States” (*Local Competition Second Report and Order*,

11 FCC Rcd 19392, 19533 (1986)). The FCC observed that to delegate NXX administration to the individual states “. . . would vest in fifty-one separate commissions oversight of function that we have already decide to centralize. . . “ (*Local Competition Second Report and Order*, 11 FCC Rcd 19392, 19533 (1996)).

Prior to the *Pennsylvania Order* area code relief was the only numbering matter delegated to state regulators. (*Local Competition Second Report and Order*, 11 FCC Rcd 19392, 19512 (1996) and 47 C.F.R. § 52.19). The *Pennsylvania Order* has expanded state jurisdiction in area code matters. The FCC has permitted states to order NXX code rationing in conjunction with area code relief in the event the industry is unable to reach a consensus on a particular rationing plan. In order to impose NXX code rationing, state regulators must order a specific form of area code relief and establish a date certain for implementation. The states did not possess such rationing authority prior to the *Pennsylvania Order*. Therefore, rather than restricting states’ authority, as the petitioners argue, the *Pennsylvania Order* expands the authority of state regulators beyond that which existed prior to the *Pennsylvania Order*. Nevertheless, the FCC has conditioned this added authority upon providing area code relief to ensure compliance with the general requirements set forth under 47 C.F.R. § 52.9. Section 52.9 states,

- a. To ensure that telecommunications numbers are made available on a equitable basis, the administration of telecommunications numbers shall, in addition to the specific requirements set forth in this subpart:
  1. Facilitate entry into the telecommunications market place by making telecommunications numbering resources available on a efficient, timely basis to telecommunications carriers;
  2. Not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications customers; and

3. Not unduly favor one telecommunications technology over another.

The thrust of these general requirements is to make certain that carriers have access to an adequate supply of numbering resources in the competitive telecommunications marketplace to provide service to customers. Currently, area code relief is the only means by which telecommunications carriers are assured of an adequate supply of numbering resources. If the additional authority granted to state regulators to engage in NXX code rationing were not conditioned upon first providing area code relief, then the public would be disserved as carriers run out of numbers -- or can not obtain numbers needed to enter new markets -- precisely what has occurred in Pennsylvania.

**B. Some states argue for authority over numbering resources as a means to carry out state regulatory policy.**

Some states, such as Maine, criticize the *Pennsylvania Order* because it does not permit them to take back numbers previously assigned to a particular carrier. In other words, these states seek the authority to require a carrier to return telephone numbers to the Code Administrator. These states argue that this authority is necessary in order to avoid carriers "abusing" numbers and to ensure that numbers are used "properly". What is conspicuously lacking in their argument is any definition of what constitutes "abuse" or a "proper" use. In effect, these states want authority over a national resource in order to carry out their own regulatory policy. They wish to administer NXX code allocation and assignment in order to enforce certification procedures and to control NXX utilization.

This type of regulation is not based on federal law, the FCC rules or the Industry Numbering Committees (INC) Guidelines. As a matter of fact, the Maine PUC criticizes the INC



Guidelines. In its Petition for Reconsideration, the Maine PUC faults the self-certification and dispute resolution provisions of the Central Office Code Administration Guidelines. It argues that state commissions should be permitted to order the return of NXX codes to the Code Administrator as a regulator enforcement tool, an assertion joined by the New Hampshire Public Utility Commission.<sup>7</sup>

Granting states authority over number administration for the purpose of carrying out regulatory policy is antithetical to the goals of the national numbering policy of the FCC under Telecommunications Act of 1996. The goals of that policy include efficiency, uniformity and availability of numbering resources in a competitive marketplace. The FCC's *Pennsylvania Order* recognizes this and properly limits state regulators' authority over number administration to area code relief.

**C. The *Pennsylvania Order* ensures compliance with the general requirements as set forth under 47 C.F.R. § 52.9.**

Congress intended that there be a uniform national numbering system. The role of government in this system is to make telephone numbering resources available to carriers competing in the telecommunications marketplace. As stated above, the purpose of the Telecommunications Act of 1996 is to promote competition in the telecommunications industry. Competition requires equal access to an adequate supply of numbering resources on a non-discriminatory basis. Although changes in the telecommunications marketplace may demand

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<sup>7</sup> The California Cable Television Association goes even further by asking for FCC endorsement of an explicit state provided preference for "facilities based entrants serving residential markets". Its comments reflect that this preference is for landline carriers only. Its comments do not address this preference's obvious failure to meet the general requirements set forth under 47 C.F.R. 52.9.

that more efficient use of numbers be developed, number conservation is a means, not an end in and of itself. The purpose of conservation is to provide access to sufficient numbering resources so that carriers can serve their customers. It should not restrict a particular carrier's access to these resources. Furthermore, in today's telecommunications industry, conservation is not a substitute for area code relief. Although perhaps politically unpopular, area code relief is necessary to provide an adequate supply of numbering resources. The *Pennsylvania Order* embraces these principals by ensuring that state regulators do not artificially limit the availability of numbering resources.

**D. States may experiment with number conservation by seeking FCC approval.**

The petitioners criticize the *Pennsylvania Order* stating that it unduly restricts state regulators efforts to order conservation. Indeed, several petitioners argue that the *Pennsylvania Order* restricts state regulators' authority to order rate center consolidation. This latter criticism is plainly wrong. Nothing in the *Pennsylvania Order* forbids states from engaging in rate center consolidation. Rate center consolidation is one method of NXX code conservation squarely within the jurisdiction of the individual states. States are free to order rate center consolidation as they see fit. At paragraph 29 the FCC states in the *Pennsylvania Order* that "[w]e encourage the Pennsylvania Commission and other state commissions to consider other measures and activities, such as rate center consolidation, that effect number usage and may decrease the frequency of the need for area code relief." (*Pennsylvania Order* at ¶ 29). The *Pennsylvania Order* encourages rather than proscribes rate center consolidation. It does not restrict states from engaging in this method of conservation.

The *Pennsylvania Order* also provides a mechanism by which states may implement number conservation. At paragraph 31 of the *Pennsylvania Order* the FCC states:

We are very interested in working with the state commissions that have additional ideas for innovative number conservation methods that this Commission has not addressed, or state commissions that wish to initiate number pooling trials the implementation of which would fall outside the guideline we adopt in this Order. We therefore encourage such state commissions, prior to the release of any order implementing a number conservation plan or number pooling trial, to request from the Commission an additional, limited, delegation of authority to implement these proposed conservation methods, comparable to the authority we are granting to Illinois in this order.

The FCC makes it clear that states may petition it for authority to engage in number conservation. This is another manner in which the *Pennsylvania Order* expands opportunities for state action in number administration. Contrary to the arguments presented by petitioners, states are not without an avenue to explore number conservation methods in addition to providing area code relief.


### **III. Conclusion**

For the reasons set forth above, Nextel urges the Commission to affirm its *Pennsylvania Order* and not to reconsider its ruling in this matter.

Respectfully submitted,

Nextel Communications, Inc.

Date: February 4, 1999



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### **CERTIFICATE OF SERVICE**

I certify that on the 4<sup>th</sup> day of February, 1999, I cause a copy of the foregoing Comments of Nextel Communications, Inc. dated February 4, 1999 to be served, as indicated, postage pre-paid, on each party in the attached service list.

Date: February 4, 1999

A handwritten signature in cursive script, reading "Nathan T. Foose", written over a horizontal line.

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